IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

DANIEL HAUGSNESS d/b/a DAN AND BILL'S RV PARK, Appellant, v. PIERCE COUNTY, Respondent.	No. 33737-1-II UNPUBLISHED OPINION

HOUGHTON, P.J. -- Daniel Haugsness appeals the superior court's denial of his land use petition, brought under the Land Use Petition Act (LUPA), chapter 36.70C RCW, in which he challenged a cease and desist order Pierce County issued when it dismissed his application for a conditional use permit. The County terminated review of Haugsness's application to operate an RV (recreational vehicle) park along the Puyallup River because he failed to provide a "deep and/or fast-flowing water" analysis (DFFW analysis) and an adequate wetlands mitigation plan. Haugsness challenges the decision, arguing that (1) res judicata does not preclude him from disputing the necessity of the requested information, (2) the County erred in requiring a DFFW analysis, (3) equitable estoppel bars the County from asserting the inadequacy of his wetlands mitigation plan, and (4) collateral estoppel bars the County from relying on evidence ruled inadmissible in a parallel criminal proceeding. Finding no error, we affirm.

FACTS

Haugsness owns an approximately 13-acre parcel of land along the Puyallup River. The parcel roughly forms a right triangle, with the longest side fronting the river.

In May 2000, the County's Department of Planning and Land Use Services discovered that Haugsness was operating an RV park without the necessary permits. After County staff informed him that the use required land use permits, Haugsness applied for a conditional use permit, a shoreline development permit,[1] and a wetland study review.

In his application, Haugsness stated that he currently used the parcel as a contractor's yard and an RV park with 19 RV units. He proposed an RV park for up to 30 RV units.

In the environmental checklist that Haugsness submitted for review under the State Environmental Policy Act (SEPA), chapter 43.21C RCW, he indicated that the project site includes wetlands. He also stated that the site lies within a 100-year floodplain. But he reported that the RVs would be located outside the floodplain boundary.

The County regulates development within the floodplain. *See* Pierce County Code (PCC) chapter 17A.50. The floodplain comprises the total area subject to inundation by a "100-year flood," i.e., a flood that has a 1 percent or greater chance of occurrence in any given year. Administrative Record (AR) at 225. The floodplain includes both the "flood fringe" and the "floodway." AR at 227. The flood fringe is the area subject to flooding, but outside the limits of the floodway. The floodway is the area subject to flood depths exceeding one foot and/or the area of "deep and/or fast flowing water." AR at 227. "Deep and/or fast-flowing water" is water

[1] The shoreline development permit is under review with the Department of Ecology and is not part of this appeal.

that is faster and deeper than a minimum threshold graphically represented in the PCC. AR at 225; PCC 17A.50.110 (AR at 254).

The County prohibits development within floodways, including both the floodway designated by the Federal Emergency Management Agency (FEMA) and areas of deep and/or fast-flowing water. PCC 17A.50.170 (AR at 259); PCC 17A.50.110(A) (AR at 254).

To determine the boundaries of the floodplain and FEMA-designated floodway, the County relies on federal Flood Insurance Rate Maps (FIRM maps). Areas of deep and/or fast flowing water may exceed the boundaries of the FEMA-designated floodway. Thus, the County does not rely on the FIRM maps to determine such areas. Rather, applicants must submit a DFFW analysis to establish that a proposed development within the floodplain does not encroach on the floodway. The DFFW analysis results in a more precise determination of the boundaries of the floodway in the area of proposed development. The County relies on the DFFW analysis to update the floodway map and to assess whether a proposed project is reasonably safe.

A development permit application is not complete unless it includes, among other things, evidence of compliance with the County's stormwater management manual and any other documents or information required in the Pierce County Code. PCC 17A.10.070(C)(3)(a). Also, during review of an application, the County may require the applicant to submit additional information. PCC 17A.10.070(C)(3)(d) (AR at 231).

Following an initial review of Haugsness's permit application, the County notified him that his site plan did not clearly show the floodplain relative to the site; that compensatory flood storage must be provided in the flood fringe, not the floodway; and that "[i]t is imperative that a detailed hydrologic and hydraulic floodway/floodplain analysis report be prepared and submitted

for the County's review. The flood analysis must clearly and accurately determine and show the floodway based on the County's Deep and/or Fast Flowing Water (DFFW) criteria, as required by the floodplain regulations. Areas of DFFW must not be encroached within." AR at 264. The County also notified Haugsness that because the project site includes wetlands, he needed to submit a code-compliant wetlands analysis and wetlands mitigation plan.

An application expires if an applicant fails to submit requested information within 180 days, absent an extension. PCC 18.60.030(C). Haugsness disputed the necessity of the requested information and failed to provide it. But he obtained a 180-day extension.

By letter dated August 1, 2002, the County informed Haugsness that his application expired. The County later determined the application did not actually expire until October 14, 2002. But for a period of 62 days, the County considered the application void as a result of Haugsness's failure to submit requested information.

First Appeal

Haugsness appealed to a hearing examiner, raising two arguments. He first argued that the County improperly terminated the application process before his 180-day extension period expired. Second, he argued that the County erred in requiring a DFFW analysis and additional wetlands information.

Haugsness argued that the County should defer its requirement of a DFFW analysis until the completion of upstream levee projects. Craig Peck, Haugsness's engineer, testified that upstream levee projects "could probably" affect the project site, resulting in diminished water velocities. AR at 202. He also stated that a DFFW analysis was not necessary because the proposed development would not encroach on the floodway. He did not provide the County

with supporting data because a County employee had told him his study and analysis were inadequate.

Haugsness further argued that the County erred in requiring additional wetlands information. In his view, his site was exempt from wetlands regulations because he intended to continue a "grandfathered" use, gravel stockpiling, in addition to the proposed RV park. AR at 202. He also asserted that the RVs would not encroach on the wetland buffer area.

The County presented testimony on the necessity of a DFFW analysis. Ron Bridgman, the County's development engineer, testified that the project site is in a floodway and faces a flood hazard. He stated that Haugsness failed to provide a DFFW analysis despite repeated requests.

Randy Brake, the County's water programs engineer, testified that the County requires a DFFW analysis when development is proposed on or near a floodplain in order to determine whether the proposal falls within an area of deep and/or fast-flowing water. He said a DFFW analysis was needed because the potential flood hazard presented a "life safety issue." AR at 201. He testified that the impact of upstream levee projects on the site was uncertain but probably would not significantly impact the river flow at Haugsness's site.

In support, the County presented an aerial photograph showing that the 75-year flood of 1996 inundated much of the site. A 75-year flood is less severe than a 100-year flood. Bridgman testified that without a DFFW analysis, it is impossible to determine the depth and speed of the floodwaters that would inundate the site during a 100-year flood.

The County's wetlands biologist testified that despite repeated requests, Haugsness failed to provide sufficient information to enable her to make an environmental determination. Haugsness also offered no mitigation proposals and otherwise failed to submit required

information.

Agreeing that the County had prematurely terminated review, the hearing examiner granted Haugsness 62 days to cure the deficiencies in his application. The hearing examiner concluded, however, that the County had properly required Haugsness to provide a DFFW analysis and wetlands information.

Accordingly, the hearing examiner denied Haugsness's request to defer a DFFW analysis and ordered him to "submit the requested data, documentation, studies and analysis, including the deep and/or fast-flow analysis to the County as requested by the several departments of the County, to assure the protection of the public health and safety on this site, and on the surrounding properties." AR at 206. Haugsness did not appeal this ruling.

On July 24, 2003, the last day of the extension period, Haugsness submitted a report titled "Puyallup River Flood Water Velocity Study" (water velocity study), a wetlands mitigation plan, and a map titled "Wetland Exhibit Drawing." The same day, the County's wetlands biologist reviewed the wetlands report, found it deficient, and discussed those deficiencies with Haugsness's biologist, who had prepared it. But the County did not give Haugsness written comments on his wetlands mitigation plan.[2]

In the water velocity study, Haugsness's engineer concluded that a DFFW analysis was unnecessary because the proposed development would not encroach on an area of deep and/or fast flowing water. A month later, on August 25, 2003, the County notified Haugsness that the

[2] Haugsness asserts that the County notified him his wetlands analysis was "complete" but then waited until after the 62-day deadline passed before notifying him of its inadequacies. Appellant's Reply Br. at 4. He fails to mention that he submitted the analysis on the 62nd day and the County's wetlands biologist verbally notified Haugsness's expert of the deficiencies that same day.

water velocity study did not satisfy the requirements for a DFFW analysis and that the County

could not process his application without an adequate DFFW analysis. The County detailed 12 deficiencies and indicated how Haugsness could cure them. Haugsness did not submit additional data or other information to the County.

On January 28, 2004, the County notified Haugsness that due to inadequate information, it could not make an environmental determination and, therefore, was terminating review of the permit application. At the same time, the County issued a cease and desist order.

Parallel to the permit proceedings, the County instituted a criminal action against Haugsness in district court. The County alleged violations of the land use code relating to his operation of the unpermitted RV park. Ruling after the hearing examiner's decision in the first appeal, the district court granted Haugsness's motion to suppress evidence the County staff obtained during site visits.

Second Appeal

Haugsness appealed the cease and desist order. The hearing examiner held hearings on the appeal in April, June, and August 2004.

Haugsness argued that collateral estoppel precluded the hearing examiner from considering any evidence obtained during site visits, including evidence of RV placement and fill and grading activity within the floodway. The hearing examiner concluded that collateral estoppel did not apply.

Haugsness further argued that the County failed to reconsider the necessity of a DFFW analysis in view of a revised site plan he submitted on July 24, 2003. What he characterized as a revised site plan is the wetland exhibit drawing that accompanied his wetlands mitigation plan and water velocity study. The drawing is based on a map titled "topographical wetland and flood

boundary exhibit," which Haugsness submitted with his original application. AR at 220 (Ex. 8).

Bridgman testified that he did not reconsider the necessity of a DFFW analysis because he did not view the revised site plan as a significant change in Haugsness's application.

Bridgman superimposed the original site plan, which delineates the floodplain boundaries, over the revised site plan, which does not. He testified that the revised site plan "shows the limits of the flood boundary consuming the RV park," including RVs within the floodplain. Report of Proceedings (RP) (Apr. 7, 2004) at 64. Accordingly, Bridgman rejected the project engineer's conclusion that a DFFW analysis was unnecessary. He testified that the FIRM map does not sufficiently delineate the area of special flood hazard affecting Haugsness's property and that a DFFW analysis was needed for that purpose.

The County requires deep and/or fast-flowing water studies to be done with a gradually varied flow, or HEC-RAS (Hydrologic Engineering Center - Rivers Analysis System) methodology. Ken Cook, another Pierce County water programs engineer, testified that Haugsness's water velocity study was inadequate because Haugsness's project engineer applied a uniform flow methodology rather than a gradually varied flow methodology. Cook explained that a uniform flow analysis would be appropriate for a very simple watercourse, such as an irrigation channel of uniform depth and width, but not for a natural river system of varying depth and width like the Puyallup River. He stated that the HEC-RAS methodology had been the industry standard for floodplain analysis of natural river systems for almost 40 years. The Army Corps of Engineers offers a user-friendly HEC-RAS software package that may be downloaded from its website free of charge.

Cook concluded that, in order to remedy the deficiency, Haugsness would need to collect

additional field data and apply an HEC-RAS methodology to determine the boundaries of the deep and/or fast-flowing water.

Cook explained that a DFFW analysis provides the means to determine whether a project falls within a deep and/or fast-flowing water area and that without a DFFW analysis, the County cannot determine the floodway on Haugsness's property.

Brake testified that in reviewing the adequacy of the water analysis, he relied on the revised site plan submitted together with the engineer's report. He stated that without a DFFW analysis, using the appropriate HEC-RAS methodology, he could not determine whether encroachments were in or out of the floodway.

The County's wetlands biologist testified that the wetlands mitigation plan was inadequate because it did not include several components required under the county code, including a statement of general goals, the location of the mitigation area, or a planting plan.

Haugsness's counsel offered testimony by his biologist to show that Haugsness substantially revised the site plan to eliminate the need for a DFFW analysis. The County objected based on relevance. The hearing examiner sustained the objection. The hearing examiner stated,

> You had 62 days within which to comply with the County requirements to do a deep and fast flow. That was not done. There was material submitted, was not accepted. I don't see any reason why we're sitting here quibbling over whether you put in a new site plan. . . . I made a decision. And as far as I'm concerned, that decision directed the applicant to do certain things and it was not done, period.

RP (Aug. 19, 2004) at 52-53.

The hearing examiner dismissed the appeal. The hearing examiner also denied

Haugsness's motion for reconsideration. Haugsness filed a LUPA petition in superior court. The superior court denied the petition. Haugsness appeals.

ANALYSIS

LUPA governs judicial review of land use decision. Under LUPA, a reviewing court stands in the shoes of the superior court and reviews a hearing examiner's decision based on the administrative record. *Cingular Wireless, L.L.C. v. Thurston County*, 131 Wn. App. 756, 767, 129 P.3d 300 (2006). A reviewing court may grant relief on a land use decision only if the party challenging the decision demonstrates its invalidity on the basis of one of the reasons specifically set forth in RCW 36.70C.130. Haugsness appears to argue that the decision was improper because the County erroneously interpreted the law and erroneously applied the law to the facts. RCW 36.70C.130(1)(b), (d).

We review questions of law de novo. *Cingular Wireless*, 131 Wn. App. at 768. In reviewing whether the County erroneously applied the law to the facts, we defer to the factual determinations made by the highest forum that exercised fact-finding authority, and we will not reverse a land use decision unless left with a firm conviction that a mistake has been made. *Cingular Wireless*, 131 Wn. App. at 768. Here, the hearing examiner found facts. Our deferential review requires us to ask only whether substantial evidence in the record supports the hearing examiner's factual determinations. *See Citizens to Preserve Pioneer Park, L.L.C. v. City of Mercer Island*, 106 Wn. App. 461, 473-74, 24 P.3d 1079 (2001). Substantial evidence is evidence that would persuade a fair-minded person of the truth of the declared premise. *Isla Verde Int'l Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 751-52, 49 P.3d 867 (2002).

Res Judicata and Collateral Estoppel

Haugsness first contends that the hearing examiner erred in applying res judicata to preclude him from disputing the necessity of a DFFW analysis.

The hearing examiner concluded that res judicata barred Haugsness from relitigating whether the County properly required him to submit a DFFW analysis and other requested information, including a complete wetlands analysis. The hearing examiner noted that he had previously ruled on this issue "[a]fter an exhaustive presentation by both the County and the appellant" at the first appeal hearing. AR at 24 (finding of fact 7).

Res judicata applies to quasi-judicial land use decisions. *Hilltop Terrace Homeowner's Ass'n v. Island County*, 126 Wn.2d 22, 31, 891 P.2d 29 (1995). The term res judicata encompasses both claim preclusion, referred to as res judicata, and issue preclusion, also known as collateral estoppel. *Shoemaker v. City of Bremerton*, 109 Wn.2d 504, 507, 745 P.2d 858 (1987). Claim preclusion prevents a party from bringing the same claim under a different theory. It applies when there is an identity of (1) issues, (2) cause of action, (3) persons and parties, and (4) quality of persons for or against whom the claim is made. *Hilltop*, 126 Wn.2d at 32 (quoting *Rains v. State*, 100 Wn.2d 660, 663, 674 P.2d 165 (1983)).

In contrast, issue preclusion prevents the relitigation of a previously adjudicated issue. *Shoemaker*, 109 Wn.2d at 507. It applies when there are: (1) identical issues, (2) a final judgment on the merits, (3) privity, and (4) the absence of injustice for the party against whom it is applied. *Willapa Grays Harbor Oyster Growers Ass'n v. Moby Dick Corp*., 115 Wn. App. 417, 423, 62 P.3d 912 (2003). Additionally, the issue to be precluded must have been litigated and determined in the prior proceeding. *Shoemaker*, 109 Wn.2d at 508.

In order for either claim preclusion or issue preclusion to apply, the subject matter of the previously adjudicated claim or issue must be identical to the precluded one.[3] *Hilltop*, 126 Wn.2d

[3] Here, the hearing examiner stated that issue preclusion applied more directly than claim

at 32 (claim preclusion); *Oyster Growers*, 115 Wn. App. at 423 (issue preclusion). Haugsness argues that the subject matter in the first and second appeals are not identical because he substantially revised his application following the hearing examiner's initial ruling to remove the necessity of a DFFW analysis.

Subject matters are not identical for purposes of res judicata if there is a substantial change in a later permit application. *Hilltop*, 126 Wn.2d at 33. A substantial change exists when a later application includes changes in design and function that resolve deficiencies identified in the original land use decision. *See Hilltop*, 126 Wn.2d at 33-4. But an applicant may not avoid the preclusive effect of res judicata by proposing changes that do not alleviate previously identified problems. *See Detray v. City of Olympia*, 121 Wn. App. 777, 790, 90 P.3d 1116 (2004); *Davidson v. Kitsap County*, 86 Wn. App. 673, 680, 937 P.2d 1309 (1997).

Haugsness argues that *Hilltop* controls here. In *Hilltop*, a proponent redesigned an antenna tower to mitigate its incompatibility with surrounding uses by reducing its size and minimizing its visual impact. Because the changes resolved the adverse impacts that resulted in

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preclusion in deciding whether Haugsness could dispute the necessity of the DFFW analysis. Haugsness addresses claim preclusion but not issue preclusion. Because he contests only the identity element, which is common to both, we need not discuss all the elements of both res judicata and collateral estoppel or determine which applies here.

We note, however, that all the elements of issue preclusion are met here. First, the issue presented in the first appeal was identical to the issue presented in the second appeal: whether the County properly required Haugsness to submit a DFFW analysis and wetlands mitigation plan. Second, a final judgment was rendered when Haugsness did not timely appeal the hearing examiner's May 23, 2003 decision. Third, the parties to both appeals were identical. Fourth, Haugsness suffers no injustice because he had a full and fair opportunity to litigate the issue in the first appeal. Finally, the issue was actually litigated and determined in the prior proceeding, following an "exhaustive presentation" by both parties. AR at 24 (finding of fact 7).

Collateral estoppel precludes Haugsness from relitigating an issue asked and answered in the first appeal: whether the County properly required him to submit a DFFW analysis.

denial of a prior permit application, res judicata did not prevent the applicant from reapplying for a permit. In contrast, in *Detray*, a developer redesigned a conditionally approved subdivision to increase density. Several months earlier, the developer had abandoned his appeal of the original permit conditions. *Detray*, 121 Wn. App. at 781. Because the proposed changes exacerbated the negative impacts that had led to the original permit conditions, res judicata barred the developer from challenging the city's decision to impose those conditions on the subsequent permit.

Haugsness contends that *Hilltop* applies because, after his first failed appeal, he changed his site plan to eliminate the need for a DFFW analysis by removing proposed encroachments from the floodplain. He distinguishes *Davidson* on the ground that his site plan revisions ameliorate, rather than exacerbate, deficiencies in his application.

The record does not support Haugsness's contention that he "submitted a second application and site plan." Appellant's Br. at 35. Haugsness submitted only one permit application. And the hearing examiner found that Haugsness did not submit a major amendment to the application.[4]

Substantial evidence supports the hearing examiner's finding. What Haugsness characterizes as a second application and "revised site plan" is a map titled "Wetland Exhibit Drawing" that accompanied his wetland mitigation plan. AR at 219 (Ex. 7). The map is a modified version of the "Topographical Wetland and Flood Boundary Exhibit" Haugsness submitted with his original application. AR at 220 (Ex. 8). The revised map differs from the

[4] Because Haugsness does not assign error to the finding, we could decline to review it. RAP 10.3(a)(3). But because he challenges the finding through argument, we exercise our discretion to review it under the applicable substantial evidence standard. *See State v. Olson*, 126 Wn.2d 315, 323, 893 P.2d 629 (1995).

original in that it does not delineate the FIRM floodplain boundary. Instead, it shows a "proposed averaged wetland buffer edge." AR at 219 (Ex. 7). The revised site plan shows that all the RVs are within the proposed wetland buffer edge whereas, on the original map, some RVs encroached on that buffer area.

But as Bridgman testified, by superimposing the revised map onto the original, it is apparent that several of the proposed RV sites encroach onto the floodplain boundary and areas of potential deep and/or fast-flowing water. Also, like the original site plan, the revised site plan includes compensatory flood storage within the floodplain rather than in the floodfringe, a deficiency that the County noted in its original October 2001 review and that the revised site plan does not ameliorate.

Haugsness argues that the revised site plan eliminates the need for a DFFW analysis by removing encroachments from an area of deep and/or fast-flowing water. This is not a new argument. In his permit application, Haugsness stated that "RV's will be located outside the flood plain boundary." AR at 285. He has argued throughout that a DFFW analysis was unnecessary because he would not encroach on the floodplain. The County disagreed, responding that a DFFW analysis is necessary precisely in order to determine whether such encroachment will occur. Following an "extensive presentation" by both parties on the issue, including testimony by Haugsness's engineer and counter-testimony by the County, the hearing examiner agreed with the County and ordered Haugsness to submit a DFFW analysis within 62 days. But Haugsness did not comply.

Hilltop does not apply to the facts of this case. Haugsness did not submit a new application and his revisions made no substantial change ameliorating the application's identified

deficiencies. The reason for requiring a DFFW analysis was that Haugsness proposed development in a floodplain, including areas of potential deep and/or fast flowing waters. The revised site plan continues to propose development in a floodplain that includes potential deep and/or fast flowing waters. Thus, the revised site plan is not a substantial change from the original and does not eliminate the need for a DFFW analysis. The hearing examiner correctly ruled that res judicata bars Haugsness from relitigating the requirement of a DFFW analysis.

DFFW Analysis Requirement

But even if res judicata did not preclude Haugsness from relitigating the issue, we would reject his challenge to the DFFW analysis requirement on the merits.

Haugsness argues that the County erred in requiring a DFFW analysis because the County code specifies that the proponent, not the County, determines whether a project falls within an area of deep and/or fast-flowing water. We disagree.

The code provides that "the proponent shall make the determination of whether the project site falls within the floodway area based on deep and/or fast flowing waters," as defined in Figure 1.[5] PCC 17A.50.110(B) (AR at 254). Haugsness interprets this provision to mean that the County must accept the conclusion of his project engineer that the development will not encroach on a deep and/or fast-flowing water area. But the requirement that a proponent must determine the deep and/or fast-flowing water area does not mean that the County must uncritically accept the accuracy of that determination.

A more reasonable interpretation is that (1) the applicant has the burden of providing adequate information to determine the floodplain boundaries in the area of proposed development,

[5] Figure 1 is a graphical representation of the threshold for deep and/or fast-flowing water.

and (2) the County uses that information to verify the accuracy of the applicant's stated floodplain boundaries. This interpretation is consistent with other provisions of the code that place the burden on the applicant to present sufficient information to demonstrate compliance with applicable regulations. *See*, *e.g.*, PCC 17A.10.070(E)(3) ("The Engineer shall show by calculations, plans, and Engineering data that the proposed project meets the requirements of these Regulations.") (AR at 231); PCC 17A.50.090(C) ("When there is insufficient information shown on the FIRM or flood hazard maps, Pierce County may require the applicant to verify that the site is out of the floodplain or floodway.") (AR at 254). But, as we read the code, it is the County that makes the final compliance determination.

Consistent with this interpretation, the County requires that an engineer prepare all site development plans. PCC 17A.10.070(A)(4) (AR at 230). But if the County determines that the applicant's engineer relied on inaccurate, incomplete, or insufficient data, the applicant or engineer must correct such deficiencies to the County's satisfaction. PCC 17A.10.070(A)(4) (AR at 230).

Here, the County rejected Haugsness's determination that the project would not encroach on a deep and/or fast-flowing water area because his engineer relied on inadequate data to reach that conclusion. Substantial evidence in the record supports the County's contrary determination. The County presented evidence that the industry standard for a DFFW analysis is the HEC-RAS method. The County explained why Haugsness's method was inadequate for a natural river system like the Puyallup River. Unlike a gradually-varied flow methodology, the uniform-flow methodology employed by Haugsness's engineer does not account for dips and bends in the watercourse that affect the river flow. Absent a DFFW analysis done with a gradually-varied flow

methodology, it is not possible to accurately determine the boundaries of the floodway. The record supports the County's determination that Haugsness's water velocity study is inadequate.

Haugsness argues that the County should have accepted his water velocity study because the county code does not specifically require that a DFFW analysis comply with the HEC-RAS methodology. But the code gives the County discretion to require information needed in the interest of public health, safety, or welfare. *See* PCC 18.60.030(B) ("In the interest of public health, safety, or welfare . . . a department may request additional application information including, but not limited to: wetland reports, geotechnical studies, hydrologic studies."). Early in the review process, the County determined that it could not evaluate Haugsness's project without a DFFW analysis. The County referred Haugsness to the appropriate staff person for technical criteria and assistance. The inadequacy of the water velocity study Haugsness eventually submitted did not result from a lack of clarity about the County's standards or Haugsness's misunderstanding about what was required but from his opposition to the County's requirements.

Haugsness argues that the hearing examiner erred in failing to allow him to present testimony that revisions to the site plan eliminated the need for a DFFW analysis by removing encroachments from the floodway. The County responds that the hearing examiner's decision was correct because the testimony would simply have begged the question. In other words, without a DFFW analysis, Haugsness could not establish that his development would not encroach on the floodway.

The County is correct. Haugsness's revised site plan shows encroachment on the floodplain and area of potential deep and/or fast-flowing water. In view of the testimony by County engineers that a DFFW analysis is necessary in order to accurately determine the floodway boundaries whenever development is proposed within a floodplain, the hearing examiner

did not err in cutting off as "irrelevant and immaterial" additional testimony by Haugsness's witnesses disputing the necessity of a DFFW analysis. RP (Aug. 19, 2004) at 54.

Wetlands Mitigation Plan

Haugsness further contends that equitable estoppel precludes the County from challenging the adequacy of his wetlands mitigation plan. He asserts that the County is bound by its acceptance of his application and filing fee.

The elements of equitable estoppel are: (1) a party's admission, statement or act inconsistent with a later claim; (2) action by another party in reasonable reliance on the first party's admission, statement or act; and (3) injury that would result to the relying party from permitting the first party to contradict or repudiate its prior admission, statement or act. *Robinson v. City of Seattle*, 119 Wn.2d 34, 82, 830 P.2d 318 (1992). The party asserting equitable estoppel must establish each element by clear, cogent, and convincing evidence. *Robinson*, 119 Wn.2d at 82. Equitable estoppel does not apply against the government unless necessary to prevent a manifest injustice and when doing so will not impair governmental functions. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 20, 43 P.3d 4 (2002).

Equitable estoppel does not apply here because Haugsness does not establish that the County acted inconsistently in accepting the wetlands mitigation plan as technically complete but then concluding it was substantively inadequate. The County's initial determination that Haugsness's wetlands mitigation plan was complete was based on its procedural adequacy.

The county code separately provides for a "preliminary review" of a wetlands application to determine whether it is complete and an "initial review" of the contents of the application. PCC 18E.30.080.B, .090(A). The preliminary review is based on submittal standards checklists

and the criteria set forth in PCC 18.40.010. Following a preliminary review of Haugsness's wetlands application, the County accepted his $1,100 filing fee and issued a notice of "Completed Application."

In contrast, the County's determination of the plan's inadequacy was based on a substantive evaluation of its contents by the County's wetlands biologist.

After the preliminary review for completeness, the County must complete an initial review within 30 days for applications requiring a public hearing. PCC 18.60.020(A). In this case, the wetlands biologist advised Haugsness of deficiencies in the application's contents on the day he submitted it. Thus, Haugsness could not have reasonably relied on the County's acceptance of his wetlands mitigation plan and filing fee as an indication of the document's substantive adequacy or the County's determination that it complied with code requirements.

Furthermore, equitable estoppel applies only to prevent an obvious injustice. Haugsness knew about the County's requirements for a wetlands mitigation plan and he chose to submit an incomplete wetlands mitigation analysis because of his continued belief that his gravel operation, a preexisting nonconforming use, relieved him of the burden of complying with wetlands regulations. There is no obvious injustice here where Haugsness was aware of the County's interpretation of its requirements and he chose to oppose them.

Collateral Estoppel Effect of Criminal Proceeding

Haugsness argues that the hearing examiner erred in failing to suppress evidence County staff obtained during site visits. He does not specifically identify the objectionable evidence, referring generally to evidence of RV placement and filling and grading activities within the floodway. He contends that the district court's suppression of evidence in the parallel criminal

proceeding precludes its use in the civil proceeding under the doctrine of collateral estoppel.

Haugsness relies on inapposite cases involving license revocation proceedings that followed unsuccessful criminal prosecutions for driving while under the influence. *See Thompson v. Dep't of Licensing*, 138 Wn.2d 783, 982 P.2d 601 (1999); *Shuman v. Dep't of Licensing*, 108 Wn. App. 673, 32 P.3d 1011 (2001). During the civil proceedings, the State was precluded from using evidence of the defendant's blood alcohol content that had been suppressed in the criminal proceedings.

The civil proceeding here differs from the license revocation proceedings in *Thompson* and *Shuman*. In those proceedings, the State had to prove the very thing it had to prove in the criminal proceeding: that the licensee/defendant had committed the violation of driving while under the influence of alcohol. In contrast, the issue in Haugsness's civil proceeding was whether he met the County's permit application requirements. Evidence of his past land use activities that had been suppressed in the parallel criminal proceeding was not relevant to this determination.

We need not address Haugsness's collateral estoppel argument further because evidence of his past unlawful encroachment on the floodway was not relevant to the hearing examiner's decision.[6] Thus, he cannot establish that the hearing examiner improperly relied on improper evidence.

[6] Haugsness also argues that the County's use of evidence obtained during the site visits violates his constitutional right to privacy. But his failure to specifically identify any objectionable evidence precludes our review of this issue. *See State v. Gentry*, 125 Wn.2d 570, 612, 888 P.2d 1105 (1995) (reviewing court will not address constitutional arguments unsupported by adequate briefing).

Attorney Fees

The County seeks attorney fees on appeal under RCW 4.84.370. Under RCW 4.84-.370(1), a county that successfully defends its decision "to issue, condition, or deny a development permit involving a site-specific . . . conditional use" is entitled to reasonable attorney fees for the costs of appeal if it was the prevailing party at both the superior court and the court of appeals.

Haugsness appealed the County's cease and desist order that the County issued when it denied his conditional use permit application. The adjudication of the cease and desist order is inseparable from the permit denial and thus falls within RCW 4.84.370. The County prevailed before the superior court. Because we affirm the superior court, we award the County its reasonable attorney fees and costs.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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Houghton, P.J.

We concur:

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Bridgewater, J.

_____

Hunt, J.